

# CBP To Add Reporting Requirements for First Sale Entries

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Congress recently instructed U.S. Customs and Border Protection (CBP) to require, for a one-year period, that each importer of merchandise declare whether the transaction value of its imported merchandise has been determined on the basis of a first or earlier sale. CBP is to submit a report containing this information to the International Trade Commission (ITC) so that the ITC can then report to Congress.

During the August 7, 2008, meeting of the Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (COAC), CBP officials discussed issues related to “first sale” data collection provisions that were included in the Food, Conservation, and Energy Act of 2008 (Farm Bill).

According to CBP officials, the first sale declaration will be required at the entry-line level. CBP plans to create a field that will allow the filer to indicate whether first sale was used. The filer would put an “F” in that field if a first sale price was declared and would leave the field blank if a first sale price was not used. This information will be transmitted to CBP via the Automated Broker Interface (ABI).

An interim rule, to be published in the Federal Register, is expected shortly, as the first sale information will be required as of August 20, 2008, or 90 days after the date of the Farm Bill. CBP also plans to issue instructions to the trade regarding the new requirement and amend the Customs and Trade Automated Interface Requirements (CATAIR).

CBP and the ITC have reached an agreement that will allow CBP to utilize its existing compliance measurement (CM) program sample to obtain the transaction value information it needs to report to the ITC (and which the ITC will subsequently report to Congress).

CBP will be revising its CM program sample process so that it can collect one additional piece of information – whether transaction value was the basis of appraisal.

As background, in January 2008 CBP published a Notice of Proposed Interpretation in the Federal Register to require that the price paid by the buyer in the U.S. to the foreign distributor forms the basis for valuation in a series-of-sales importation scenario. This interpretation would have been a departure from the current application of the valuation statute, which allows importers to use the price paid by an intermediary to a foreign manufacturer (the first or earlier sale) as the basis for determining the transaction value of merchandise involved in a series of sales.

After considerable pressure from the trade community and members of Congress, CBP Commissioner W. Ralph Basham announced on June 24, 2008, in written testimony before the Senate Finance Committee, that CBP has shelved its proposal to eliminate the use of its first sale principle for valuing transactions.

Congress included an additional provision in the Farm Bill that stated that it is the “sense of Congress” that CBP should not implement a change to the agency’s interpretation of the term “sold for exportation to the U.S.” for purposes of applying the transaction value of the imported merchandise in a series of sales before January 1, 2011. (A “sense of Congress,” even if enacted, is not considered to be law. It is simply an expression of opinion by Congress.)

Importers using first sale should coordinate with their brokers to ensure that if and when the Federal Register notice is issued mandating the new reporting requirement, the brokers are ready to go “live” and properly use the “F” indicator for all line items on an entry for which first sale is claimed.

## Customs & Trade Practice Group

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